

EXHIBIT 12



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September 16, 2018, 06:28:41 am

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News: Yes. We have good news! Well, that is to say, we have no news. But it is good news.

 The Ur-Quan Masters Discussion Forum

 The Ur-Quan Masters Re-Release

 General Discussion (Moderator: [Death 999](#))

 My take on Stardock

Pages: 1 ... 22 23 [24] 25 26 ... 68

 **Author**

Topic: **My take on Stardock** (Read 29556 times)

Krulle
Enlightened
★★★★★
 Offline
Gender: 
Posts: 878

"Hurgh!" Krulle is "spitting" again!

 **Re: My take on Stardock**
« Reply #345 on: April 06, 2018, 10:30:51 pm »

That the classification system has evolved a lot in the meantime, and when Star Control was registered, it may have been that the computer games class "sports", where Accolade had more games...

That will be a discussion in court too.
The new trademark registration is definitely for the correct main class.

Elestan
"Smell" controller
★★★★★
 Offline
Posts: 377


 **Re: My take on Stardock**
« Reply #346 on: April 06, 2018, 10:32:47 pm »

Quote from: **Talonious** on April 06, 2018, 10:19:03 pm
What, in your not-a-lawyer opinion, would be the ramifications for the difference?
Or put another way, why does it matter? (And yes, I will take anything you say with the important caveat that you're not a legal expert but just suggesting you know a bit more about these things than

Sorry, I'm going to punt, as I really have no idea. It could be that this would be regarded as an inconsequential clerical issue. Or it could be a fatal flaw in that makes it unenforceable unless you're making toys. There also seem to be two different classification regimes; the international one, and the U.S. one know how they interact. This one needs a real lawyer.

« Last Edit: April 06, 2018, 10:40:02 pm by Elestan »

Krulle
Enlightened
★★★★★
 Offline
Gender: 
Posts: 878

"Hurgh!" Krulle is "spitting" again!

 **Re: My take on Stardock**
« Reply #347 on: April 06, 2018, 10:40:54 pm »

Registered are:
US classes 022, 023, 038, 050

<https://www.uspto.gov/web/patents/classification/selectnumwithtitle.htm>:
022: ???
023: Chemical: physical process
038: ironing or smoothing
050: ???

Either I googled wrong, or I don't understand their classification approach....

Class28 seems to be ([link](#)) " TEXTILES: MANUFACTURING"
Doesn't sound much like computer games and associated toys...

<http://www.wipo.int/classifications/nice/nclpub/en/fr/20180101/hierarchy/class-28/>

The international class 28 is "Class 28 Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees"
[wikipedia](#))

Since the WIPO page is not fully functional on this iOS device, just as the USPTO list of classes, I have to stop here.
But it does open questions....

edit3: http://ptrca.org/files/handouts/US_TM_Number_Guide_2011.pdf resulted in some additional info, even though at first glance it seemed less interesting
class 022: Games, toys, and sporting goods
class 050: Merchandise not otherwise classified
38 seems to be okay, but 22 in that list also doesn't make much sense...
I'm wondering at the discrepancies....

Sounds all right, and may be the result of changed approach to classifying computer games.
I know that originally they were hoping for some merchandise/toys to be sold as well....

« Last Edit: April 06, 2018, 10:58:34 pm by Krulle »

Elestan
"Smell" controller
★★★★★

 **Re: My take on Stardock**
« Reply #348 on: April 07, 2018, 01:19:52 am »

http://forum.uqm.stack.nl/index.php?topic=7015.msg77486#msg77486

1/6

Offline

Posts: 377

Quote from: Elestan on April 06, 2018, 10:10:42 pm

Just as a total long-shot....I don't suppose there is a trademark attorney watching who could opine on whether it matters that the original Star Control trademark is in international classification 28 (Toys) instead of international classification 9 (which seems to include all computer software)?

Quote from: Talonious on April 06, 2018, 10:19:03 pm

What, in your not-a-lawyer opinion, would be the ramifications for the difference?

Or put another way, why does it matter? (And yes, I will take anything you say with the important caveat that you're not a legal expert but just suggesting you know a bit more about these things than I do)

Quote from: Elestan on April 06, 2018, 10:32:47 pm

Sorry, I'm going to punt, as I really have no idea. It could be that this would be regarded as an inconsequential clerical issue. Or it could be a fatal flaw in the trademark that makes it unenforceable under the U.S. one. There also seem to be two different classification regimes; the international one, and the U.S. one, and I don't know how they interact. This one needs a real lawyer.

Hmm...this could explain why Stardock filed a new trademark application for "Star Control" in category 9 a month or so ago. I had thought they were doing the old one was determined to have lapsed, but it might have been because it had the wrong category.

Frogboy

"Many bubbles"

★★★★★

Offline

Posts: 126

Re: My take on Stardock

« Reply #349 on: April 07, 2018, 06:45:45 pm »

Two different parties can have the same Trademark if they are in unrelated businesses. I wouldn't say that registering the Trademark for toys means they are against a computer game -- those things are too close to each other. But it does start to touch on the fact that you have co-existing use for a long time here.

Use is such a huge part of Trademark. "If you don't use it you lose it" has totally applied to Trademarks. Further, using it for a long time can establish a common law Trademark without any real registration. A common law Trademark isn't as strong as a registered Trademark. But there are situations where courts are unwilling to stop using a Trademark, because it's clear they'd been using it for a long time without anyone really challenging it. For example, if you ran a "Travel Agency" for years, a court would be reluctant to enforce PepsiCo's "Tropicana" trademark.

The relevance to this case is hugely ambiguous.

The Trademark wasn't directly used in commerce. P&F are not actually selling a product called Star Control. They used "Star Control" in an announcement for the Precursors. If saying "we're making a sequel to Star Control 2" is using the SC Trademark, then don't Paul and Fred have a decade+ of using it in that way without any objection? Vice versa, if that decade of sequel talk isn't enough to establish use of the Trademark, then isn't the GOTP announcement just making it worse?

And that's before you factor in Stardock's announcements invoking P&F and SC in the same breath.

There's some really interesting IP issues here.

Frogboy

"Many bubbles"

★★★★★

Offline

Posts: 226

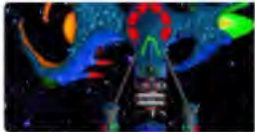




Re: My take on Stardock

« Reply #350 on: April 07, 2018, 07:24:35 pm »

What's the name of the game they announced again?

http://forum.uqm.stack.nl/index.php?topic=7015.msg77486#msg77486

2/6

- Fred and Paul @Dogar_And_Kazon · 10/12/17**
After 25 years, Star Control 2's original creators are working on a proper sequel
 After 25 years, Star Control 2's original creators are working on a proper sequel
eurogamer.net
6 11 57
- Fred and Paul @Dogar_And_Kazon · 10/12/17**
 'Star Control II' news: Game's direct sequel announced after 25 years
christiantoday.com
1 1 6
- Fred and Paul @Dogar_And_Kazon · 10/12/17**
 Star Control II devs unite for a 'passion project' sequel
gamasutra.com
1 5 31
- Fred and Paul @Dogar_And_Kazon · 10/11/17**
Star Control 2 creators finally making sequel
 Star Control 2 creators finally making sequel
rockpapershotgun.com
7 23
- Fred and Paul @Dogar_And_Kazon · 10/11/17**
Star Control II devs unite for a 'passion project' sequel
 Star Control II devs unite for a 'passion project' sequel
gamasutra.com

I wonder what Activision would do if Insomniac were to announce the "true" sequel to Spyro the Dragon with a release date 5 days before the new Spyro developed by Toys for Bob.

Elestan
"Smell" controller
★★★★★
Offline

Posts: 377



Re: My take on Stardock

« Reply #351 on: April 07, 2018, 07:50:24 pm »

Quote from: Frogboy on April 07, 2018, 07:24:35 pm

What's the name of the game they announced again?

None of those posts actually say. I assume that what you're implying is that you think consumers wouldn't read very closely, fail to notice that, and jump t

conclusion.

Quote

I wonder what Activision would do if Insomniac were to announce the "true" sequel to Spyro the Dragon with a release date 5 days before the new Spyro game being developed by Toys for Bob.

In order for that situation to be analogous, Insomniac would have to hold the copyright to Spyro or his storyline.

Right now, there seem to be two big legal question marks on this: One relating to the limits of nominative fair use of trademarks, and the other dealing with the line between copyright and trademark when applied to a product that is also a creative work. These are questions that I readily acknowledge I don't know enough about to opine on, so I'm holding off on forming an opinion until I see something written by a judge or an IP lawyer on the subject.

Frogboy

"Many bubbles"

★★★★

Offline

Posts: 226

Re: My take on Stardock

« Reply #352 on: April 07, 2018, 08:38:48 pm »

I'm not sure where you got that, Elestan. There's no fair use argument here.

Trademark infringement is unauthorized use of a trademark in in association with a product or service that is likely to cause consumer confusion.

Sort of like this:

HARDCORE GAMER

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Latest Reviews



Review: Logitech G513 RGB Mechanical Gaming Keyboard



Review: Logitech G PRO Gaming Headset



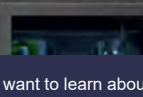
Review: Yume Nikki: Dream Diary



Review: The Witch and the Hundred Knight 2



Review: Minit



Review: Batman: The Enemy Within



Fwiffo Returns to Run Away Another Day in Star Control: Ghosts of the Precursors

By James Cunningham on October 9, 2017



If you want to learn about trademark fair use you can read here. <https://www.inta.org/TrademarkBasics/FactSheets/Pages/Fair-Use-of-TrademarksNL.aspx>

Did Paul and Fred use the Star Control trademark without authorization? Yes. Did they know that Stardock had the trademark? Yes. Did it cause confusion? Yes. Have they engaged in activities to create confusion? Yes. Could the mess have been easily cleaned up in October/November? Yes.

If we didn't want Paul and Fred to continue their story, we would have had the Ur-Quan and Spathi and so on in Star Control: Origins from the start. We didn't for the same reason: to sell them the Star Control IP - to make it easier for them to return to continue their story.

But having chosen not to invest in acquiring the Star Control IP, they forfeited the right to associate their new game with the Star Control trademark without our license. They announced it as Ur-Quan Masters II: Ghosts of the Precursors. The hard-core fans would have understood what that meant and been satisfied. But they didn't do that. They capitalized on the fame and name recognition of the Star Control brand. A trademark that Stardock spent over \$300,000 acquiring and a subsequent 4 years and millions of dollars to maintain.

« Last Edit: April 07, 2018, 08:41:18 pm by Frogboy »

lostoul

Zebranky food

★

Offline

Posts: 17

Re: My take on Stardock

« Reply #353 on: April 07, 2018, 08:52:36 pm »

on the belief that when you bought "star control" that you acquired everything within the name as well...and that therein lies the problem...



Elestan
 "Smell" controller
 ★★★★★
 Offline
 Posts: 377

Re: My take on Stardock
 « Reply #354 on: April 07, 2018, 09:14:03 pm »

So, I think I need to point out a rhetorical issue in your last post. You start out with the assertion:

Quote from: Frogboy on April 07, 2018, 08:38:48 pm
 There's no fair use argument here.

Clearly there is a fair use *argument*; the question is whether it succeeds or not. And I was expecting you to speak to that, based on the reference you cite you drop the topic of fair use, and change the subject to trademark infringement in general:

Quote
 Trademark infringement is unauthorized use of a trademark in in association with a product or service that is likely to cause consumer confusion.

...and then you go on to a point-by-point of why trademark infringement applies.

But whether trademark infringement applies or not is orthogonal to whether P&F's post falls under the fair use exception. To answer the fair use question point you need has to come from the fair use criteria, showing why they do not apply.

FWIW, my not-a-lawyer guess, based on reading the fair use article, is that saying "The Creators of Star Control II are making a sequel" might well have been a fair use if they stopped there. However, using the SC2 product imagery probably pushed it over the line because it used more of the product identity than was necessary to identify it, and saying 'true sequel' might also be a problem because it implies that Stardock's products might not be.

So right now, I suspect they stepped over the line...but not in a giant, aggressive way. If I were to award damages just based on my own concept of fairness (regard to the legal rules for such calculations), I'd have them pay Stardock some money, but not a massive amount of money.



Frogboy
 "Many bubbles"
 ★★★★★
 Offline
 Posts: 226

Re: My take on Stardock
 « Reply #355 on: April 07, 2018, 09:25:11 pm »

Quote from: lostsoul on April 07, 2018, 08:52:36 pm
 on the belief that when you bought "star control" that you acquired everything within the name as well...and that therein lies the problem...

When we acquired the trademark we...acquired the trademark. I'm not sure what you are getting at.



PRH
 "Many bubbles"
 ★★★★★
 Offline
 Gender: ♂
 Posts: 107

Re: My take on Stardock
 « Reply #356 on: April 07, 2018, 09:47:36 pm »

Quote from: Frogboy on April 07, 2018, 09:25:11 pm
 When we acquired the trademark we...acquired the trademark. I'm not sure what you are getting at.

As a fan of SC2/UQM, the worst thing I'm afraid of is that you shut down GotP's development if you win the lawsuit. And the fact that you are attempting to use trademarks associated with UQM hints that this is your intention. If I was sure that GotP is going to be developed by Fred & Paul and released no matter who won the lawsuit, I would be content. Force F&P to apologize for infringing on your trademark, force them to pay whatever damages you think are due. As long as the games get released, I would be content. So if F&P rebrand the classic games so that they no longer use the *Star Control* name (say, *Famous Battles of the Ur-Quan Masters*, and *Ur-Quan: Ghosts of the Precursors*, the way you rebranded SC3 as *The Kessari Quadrant*), would you agree to leave these games alone? Would F&P be allowed to mention that the classic games were originally released as *Star Control* and *Star Control II*?

« Last Edit: April 07, 2018, 10:22:43 pm by PRH »



lostsoul
 Zebranky food
 ★★★★★
 Offline
 Posts: 17

Re: My take on Stardock
 « Reply #357 on: April 07, 2018, 10:19:43 pm »

Quote from: Frogboy on April 07, 2018, 09:25:11 pm
Quote from: lostsoul on April 07, 2018, 08:52:36 pm
 on the belief that when you bought "star control" that you acquired everything within the name as well...and that therein lies the problem...

When we acquired the trademark we...acquired the trademark. I'm not sure what you are getting at.

I believe your company was misled into thinking you bought everything star control related...names...places...characters...story...ui...themes...sounds...images...etc. I think you were misled into thinking you bought everything related to the name "star control" ... just the name...nothing else.



rosepatel
 "Many bubbles"
 ★★★★★
 Offline
 Posts: 126

Re: My take on Stardock
 « Reply #358 on: April 07, 2018, 10:32:17 pm »

How much confusion was caused when **Stardock announced that Paul and Fred were making a true sequel?**
 How much confusion was caused when **Stardock doubled down by giving Paul and Fred their blessing in every interview and announcement?**
 How much confusion was caused when Stardock talked about a **multiverse where Star Control 2 was a separate continuity, reserved for Paul and Fred's**
 How much confusion was caused when Stardock insisted that the only way you'd see the SC2 aliens again is if Paul and Fred were directly involved?
 How much confusion was caused by over a decade of calling Paul and Fred the creators, who are planning and working on a sequel, without a challenge to that (aside from alone Stardock)?

It's not as cut and dry as other Trademark infringement cases. It's pretty rare that a plaintiff would openly use their Trademark to describe the defendant's product, present, or future, let alone all of the above -- and then sue the defendant anyway. This is the only time I've ever heard of a company doing that. It's unprecedented.

« Last Edit: April 07, 2018, 10:40:44 pm by rosepatel »



Frogboy
 "Many bubbles"
 ★★★★★

Re: My take on Stardock
 « Reply #359 on: April 07, 2018, 10:47:40 pm »

Offline
Posts: 226


Quote from: lostsoul on April 07, 2018, 10:19:43 pm

Quote from: Frogboy on April 07, 2018, 09:25:11 pm

Quote from: lostsoul on April 07, 2018, 08:52:36 pm

on the belief that when you bought "star control" that you acquired everything within the name as well...and that therein lies the problem...

When we acquired the trademark we...acquired the trademark. I'm not sure what you are getting at.

I believe your company was misled into thinking you bought everything star control related...names...places...characters...story...ui...themes...sounds...impressions

when in fact all you bought was the the name "star control" ... just the name...nothing else.

No. Trademarks do not include characters, stories, UI, themes, sounds, impressions.

Copyright can cover some of these things, like characters, stories, music. Stardock has no rights to the specific characters in Star Control II or the story of course, Star Control: Origins music is composed by Riku.

This is why Star Control: Origins doesn't include any material from Star Control II that would fall under copyright. The closest thing would be Riku's music course, Star Control: Origins music is composed by Riku.

So for example, I would have loved to have had the Super-Melee theme music in Star Control: Origins. But I wasn't able to get ahold of Dan Nicholson, the guy that track I believe. So we had to compose new music for that.

Similarly, we can't put an alien that looks visually derived from Fwiffo into the game (though that gets murky fast since a one-eyed, green alien, is not that far from Fwiffo). The more distinctive your copyrighted work is, the easier it is to protect.

Now, UI, game design, themes, we didn't "buy" those things because we didn't need to any more than they had to "buy" Space Wars to do Super-Melee. Birds needed to buy any of the gazillion games it is a clone of.

Hope that helps!

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Jump to: => General Discussion

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